



# Chapter NR 169

## Rule Revisions

RR # 698

DRY CLEANER ENVIRONMENTAL RESPONSE FUND PROGRAM

APRIL, 2003

Revisions have been proposed to the Dry Cleaner Environmental Response Fund (DERF) program rule, Chapter NR 169, Wis. Adm. Code. This fact sheet summarizes the major revisions proposed to the rule, however, not every change made can be included here – consult the proposed rule revision itself for the exact language. Copies of the draft rule may be downloaded from the Internet at [www.dnr.state.wi.us/org/aw/rr](http://www.dnr.state.wi.us/org/aw/rr), or obtained by calling 608-264-6020 or 1-800-367-6076. Many of these rule changes simply incorporate statutory changes that have been made since the rule became effective in February 2000. Other changes reflect enhancements intended to streamline implementation of the program.



The rule becomes effective on the first day of the month after it is published in the Wisconsin Administrative Register.

### Eligible applicant clarifications:

**Property owner clarification:** The rule clarifies that a person who currently owns property on which a licensed dry cleaning facility operated is eligible for this program, even if the facility ceased or later ceases to operate, so long as the property owner owned the property for at least part of the period during which the dry cleaning facility was licensed and operating. However, persons who buy the property after a dry cleaning facility has ceased to operate at the site are not eligible for the DERF program. A facility has ceased to operate when it no longer is capable of dry cleaning clothes and is no longer subject to the licensing requirements of s. 77.9961, Wis. Stats.

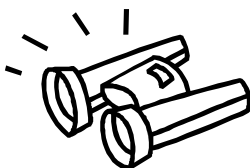
**Personal representatives** of an eligible applicant may *complete* the reimbursement process if the eligible applicant had already completed and submitted a potential claim notification form to the department.

**Agents:** The rule clarifies that agent agreements must be in writing, must include the name of the eligible applicant as well as the person who will be acting as an agent in conducting the cleanup actions, and must be signed and dated by both parties. Costs incurred prior to a signed, written agent agreement are not eligible for reimbursement from the program.

### Pre-Discovery Activities:

**Site investigation scoping defined and reimbursable:** The purpose of site investigation scoping is to document a discharge from a dry cleaning facility and to provide sufficient data to develop an adequate workplan for a ch. NR 716 site investigation. The rule defines site investigation scoping to mean a report which includes evaluation of the relevant items for the purpose of identifying a release of a dry cleaning product from a dry cleaning facility or of ensuring that the scope and detail of the subsequent field investigation are appropriate to the complexity of the facility. Relevant items (considering the location of the facility) include:

- History of the facility, including location of dry cleaning equipment, chemical and filter storage locations;
- Knowledge of the type and amount of contamination;
- Environmental media affected or potentially affected by the contamination;



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- Assessment of potential or known impacts to receptors;
- Assessment of potential or known impacts to sensitive areas including wetlands, outstanding resource waters, exceptional resource waters, and sites or facilities of historical or archeological significance; and
- A map showing the site boundaries, location of source areas, utility corridors (including sewer lines), adjacent streets, receptor locations and sample locations and results of sampling.

Reimbursement for site investigation scoping activities will be made as part of the site investigation reimbursement application. The costs for site investigation scoping activities are reimbursable only if contamination from the release of a dry cleaning product at a dry cleaning facility is found.

### **Interim Actions:**

Interim actions had specific statutory requirements for reimbursement under s. 292.66, Wis. Stats. Because that statute has recently been repealed, those specific provisions no longer apply to interim actions. The rule revisions establish criteria for reimbursing interim actions, including submitting to the department for approval detailed information regarding the interim action (including cost estimates and a schedule for conducting a ch. NR 716 site investigation). Departmental approval of the interim action is required, and the department is authorized to require competitive bids for the interim action, depending on the scope and costs submitted for approval.

### **Prioritization System and Awards:**

DNR project managers will continue to assign a high, medium or low priority to sites when the site investigation is complete. In addition, 25% of the annual DERF funds for response actions are allocated to high priority sites, 60% to medium priority sites, and 15% to low priority sites. At the end of the fiscal year, the department may transfer unused funds in one risk category to another if there are insufficient funds to meet application needs.

### **Consulting and Contract Services:**

Section NR 169.23 addresses consulting and contract services. Some of the changes in this section relate to the form in which bids are submitted. Emergency actions that meet the criteria in ch. NR 708 will continue to be exempt from the requirement to seek bids. Interim actions may require bidding as determined by the DNR project manager. Site investigations will need to have bids submitted in the form of a workplan, and the cost of developing the workplan will be reimbursed to the consultant selected to conduct the investigation. The site investigation workplan must include a description of the overall strategy for assessing the impacts from the site, including a monitoring strategy which includes parameters necessary to evaluate enhanced natural attenuation or monitored natural attenuation as a remedy. In addition, the remedial action options report submitted when the investigation is complete must include an assessment of natural attenuation or enhanced natural attenuation as a remedy for the site.



All workplans and proposals received, and a justification for the workplan or proposal selected by the owner or operator, shall be submitted to and approved by the department prior to entering into a contract with that consultant.

#### **For More Information**

To order this and any other publications, or to find out more information about the Remediation and Redevelopment Program, please call our Information Line at 800-367-6076 (long distance in-state ) or 608-264-6020 (local or out-of-state); or check out our web site at <http://www.dnr.state.wi.us/org/aw/rr>.

**This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions.**

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